

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 133 Criminal History of Licensees and Employees

SPONSOR(S): Commerce Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates and licenses several Florida professions, including barbers and cosmetologists. In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for licensure as a barber or cosmetologist. Under s. 455.213(3)(b)1., F.S., the Barbers’ Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant’s criminal history for:

- A conviction for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

Related to barber and cosmetology licenses, the bill reduces the time frame to look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist from five years to three years.

The bill allows a board to consider an applicant’s criminal history, regardless of when a conviction occurred if the applicant was convicted of a crime at any time during the three-year period immediately preceding the application. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

The bill requires the Barbers’ Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

DBPR also administers and enforces the Beverage Law, which requires licenses for businesses in the alcohol industry and payment of various associated fees and taxes. A provision in the Beverage Law, s. 562.13(3), F.S., prohibits a licensed alcohol vendor from employing a manager or bartender who has been convicted of certain crimes within the prior five years.

Related to professions under the Beverage Law, the bill repeals s. 562.13(3), F.S., to allow any licensed alcohol vendor to employ any manager or bartender with certain criminal history.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.¹

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”² Chapter 455, F.S., provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.³

Barbers

The Barbers’ Board under DBPR governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.⁴ Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes.⁵

To be eligible for a barber license, an applicant must:⁶

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination,
- Not have a disqualifying criminal record, and
- Pay an application fee.

Cosmetologists

The Board of Cosmetology under DBPR governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.⁷

To be eligible for a cosmetology or specialty license, an applicant must:⁸

- Be at least 16 years old or have a high school diploma,
- Complete the required training,
- Pass the licensure examination (if applicable),
- Not have a disqualifying criminal record, and
- Pay an application fee.

Criminal History – Barbers and Cosmetologists

¹ The divisions include: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology. S. 20.165, F.S.

² S. 455.01(6), F.S.

³ DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. Ss. 455.203 and 455.221(1), F.S.

⁴ S. 476.144(1), F.S.

⁵ S. 476.034(2), F.S.

⁶ S. 476.114, F.S.

⁷ S. 477.013(4), F.S.

⁸ S. 477.019(2), F.S.

In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for specified professions, including barbers and cosmetologists.⁹ Section 455.213(3)(b)1., F.S., provides the Barbers' Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant's criminal history for:

- A conviction¹⁰ for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or a crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;¹¹
- Capital, life, or first degree felony sexual battery;¹²
- Capital, life, or first degree felony lewd or lascivious battery or molestation;¹³
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;¹⁴
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;¹⁵ or
- A conviction for a similar offense committed in another jurisdiction.¹⁶

The court must make written findings designating a person who meets the criteria as a sexual predator.¹⁷

Forcible Felonies

Section 776.08, F.S., defines a forcible felony as any of the following crimes:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Arson;
- Kidnapping;
- Aggravated assault;
- Aggravated battery;
- Aggravated stalking;

⁹ Ch. 2019-167, Laws of Fla.

¹⁰ For purpose of licensing, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. S. 455.213(3)(b)1., F.S.

¹¹ Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

¹² S. 794.011, F.S.

¹³ S. 800.04, F.S.

¹⁴ S. 847.0145, F.S.

¹⁵ S. 775.21(4)(a)1.b., F.S.

¹⁶ S. 775.21(4), F.S.

¹⁷ Ss. 775.21(4)(c) and 775.21(5), F.S.

- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb; and
- Any other felony that involves the use or threat of physical force or violence against any individual.

Vocational Training in Correctional Facilities

The Florida Department of Corrections Bureau of Education partners with state colleges, technical colleges, and community education organizations to provide vocational training in 37 trades to incarcerated inmates.¹⁸ Included in these vocational programs are barbering programs at Blackwater River Correctional Facility,¹⁹ Graceville Correctional Facility,²⁰ and Lake City Correctional Facility,²¹ as well as cosmetology programs at Lowell Correctional Institution,²² Homestead Correctional Institution,²³ and Gadsden Correctional Facility.²⁴

Beverage Law

The Division of Alcoholic Beverages and Tobacco (ABT) in DBPR administers and enforces the Beverage Law.²⁵

In general, the Beverage Law²⁶ provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor.²⁷ The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer.²⁸

Florida has adopted the three-tier system. Exceptions to the three-tier regulatory system permit in-state wineries,²⁹ breweries,³⁰ and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.³¹

Currently, it is unlawful for any licensed vendor to employ a manager or a bartender who has, within the prior five years, been convicted:³²

- Of any offense against the beverage laws of Florida, the United States, or any other state.
- In this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony violation of the Florida Comprehensive Drug Abuse Prevention and Control Act,³³ or the controlled substances act of any other state or the United States.
- Of any felony in this state, any other state, or the United States.

The term “conviction” is defined to “include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.”³⁴

¹⁸ Florida Department of Corrections, *Bureau of Education*, <http://www.dc.state.fl.us/development/programs.html> (last visited Nov. 1, 2023).

¹⁹ Florida Department of Corrections, *Blackwater River Correctional Facility*, <http://www.dc.state.fl.us/ci/185.html> (last visited Nov. 1, 2023).

²⁰ Florida Department of Corrections, *Graceville Correctional Facility*, <http://www.dc.state.fl.us/ci/159.html> (last visited Nov. 1, 2023).

²¹ Florida Department of Corrections, *Lake City Correctional Facility*, <http://www.dc.state.fl.us/ci/219.html> (last visited Nov. 1, 2023).

²² Florida Department of Corrections, *Lowell Correctional Institution*, <http://www.dc.state.fl.us/ci/314.html> (last visited Nov. 1, 2023).

²³ Florida Department of Corrections, *Homestead Correctional Institution*, <http://www.dc.state.fl.us/ci/419.html> (last visited Nov. 1, 2023).

²⁴ Florida Department of Corrections, *Gadsden Correctional Facility*, <http://www.dc.state.fl.us/ci/111.html> (last visited Nov. 1, 2023).

²⁵ S. 561.02, F.S.

²⁶ S. 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

²⁷ See s. 561.14, F.S.

²⁸ S. 561.14(3), F.S.

²⁹ See s. 561.221(1), F.S.

³⁰ See s. 561.221(2), F.S.

³¹ See s. 565.03, F.S.

³² S. 562.13(3)(a), F.S.

³³ Ch. 893, F.S.

³⁴ S. 562.13(3)(a), F.S.

These restrictions do not apply to the following vendors who operate places of business where beverages are sold for consumption off the premises:³⁵

- Vendors of malt beverages.³⁶
- Vendors of beverages containing malt, wines, and fortified wines.³⁷

Effect of Proposed Changes

Criminal History – Barbers and Cosmetologists

The bill amends s. 455.213, F.S., to reduce the time frame, from five years to three years, that an applicable board may look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist.³⁸

The bill provides the applicable board may consider an applicant’s criminal history, regardless of when a conviction occurred if, at any time during the three-year period immediately preceding the application, the applicant was convicted of a crime. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

Vocational Training in Correctional Facilities

The bill requires the Barbers’ Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

Beverage Law

The bill repeals s. 562.13(3), F.S., of the Beverage Law, to allow any licensed alcohol vendor to employ any manager or bartender with certain criminal history.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 455.213, F.S., relating to general licensing provisions.

Section 2: Repeals s. 562.13(3), F.S., relating to employment of bartenders by certain vendors prohibited; exceptions.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³⁵ S. 562.13(3)(b), F.S.

³⁶ S. 563.02(1)(a), F.S.

³⁷ S. 564.02(1)(a), F.S.

³⁸ For purposes of calculating the recidivism rate for inmates released from custody, the Florida Department of Corrections uses the definition of “recidivism” in s. 945.041(2), F.S., which means an inmate’s rearrest, reconviction, reincarceration, or probation revocation within a three-year time period following the inmate’s release from incarceration.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more people to become licensed as barbers or cosmetologists, or employed as managers or bartenders, by reducing disqualifications to licensure or employment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES